

**McIntosh, Scott**

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**From:** Jon Givens [JGivens@bankston.to]  
**Sent:** Friday, January 05, 2007 5:11 PM  
**To:** McIntosh, Scott  
**Cc:** Jana Vanderbrink; Dienelt, John  
**Subject:** RE: Markup of Draft Joint Memorandum

Scott

Do you have an insert for page 4 section I B2?

The firm name on the letter head and headers are required by court rule so I cannot eliminate them. We will of course add a signature block for you. Do you want Diane to sign for you?

The organization chart you propose has 2 entities we have not conducted discovery about and have no disclosures from defendants concerning. Thus for the organizational chart it is best if we submit both charts and identify the respective sources.

I will revise the document and resend it to you.

By the phrase 'the Court is not addressing the piercing issue' we were referring to the ruling by the Court it would not rule on the piercing motion and cross-motion.

-----Original Message-----

**From:** McIntosh, Scott  
**To:** Jon Givens  
**Cc:** Jana Vanderbrink; Dienelt, John; McIntosh, Scott  
**Sent:** 01/05/2007 11:56  
**Subject:** Markup of Draft Joint Memorandum

Jon,

I did not receive a response to my email from yesterday regarding the Joint Memorandum, including the question regarding the meaning of the phrase "Since the Court is not addressing the piercing issue," in Section II of your draft.

However, in the interest of facilitating the Joint Memorandum, which is due today, I am attaching a markup that either revises the "joint" sections to be neutral, or sets forth the arguments of each side, where there is a dispute.

Please let me know whether you will agree to submission of a Joint Memorandum, with the proposed revisions on the attached document, together with our insert for Section I(B)(2), plus any changes you plan to make to Section I(B)(1).

Regards,  
Scott

Scott McIntosh

DLA Piper US LLP

**Exhibit D**  
**pg. 1 of 2**

1/8/2007

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Thank you.

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